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6

7 **IN THE SUPREME COURT**  
8 **STATE OF ARIZONA**  
9

10 PETITION TO ADOPT RULE  
11 GOVERNING APPLICATION TO  
12 TRANSFER STRUCTURED  
13 SETTLEMENT PAYMENT RIGHTS

Supreme Court No. R-07-0027  
Comment of the National Assoc  
of Settlement Purchasers Re:  
Petition to Adopt Rule Governing  
Application to Transfer Structured  
Settlement Payment Rights

14 The National Association of Settlement Purchasers (NASP) is a trade association consisting  
15 of companies that provide liquidity options to individuals receiving structured settlement  
16 payments ("Funding Companies"), attorneys who represent Funding Companies in court  
17 proceedings involving the transfer of structured settlement payment rights, and others  
18 involved in the "Secondary Market" for structured settlement payments. NASP members do  
19 business in Arizona and are represented by members of the Arizona Bar in structured  
20 settlement transfer matters filed in the courts of Arizona under A.R.S. §12-2901. NASP does  
21 not oppose a rule of procedure intended to assist Arizona judges in reviewing structured  
22 settlement transfer applications filed in accordance with A.R.S. § 12-2901. NASP would  
23 welcome the opportunity in the future to meet and work with the Arizona Bar Association,  
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1 the Arizona Judge's Association, Judge Burke, and/or other interested parties and Judges in  
2 Arizona to address any concerns and issues that might arise involving structured settlement  
3 payment transfers. NASP believes that a judiciary that is informed about the secondary  
4 market for structured settlements and these types of transactions is a good thing.  
5

#### 6 Background on the Structured Settlement Industry

7 As the Arizona Supreme Court considers the proposed rule, it might be helpful for the  
8 Court to have more information about the structured settlement purchasing or factoring  
9 industry, from the perspective of the Funding Companies and its customers, the sellers. In  
10 dealing with this subject in other states, both in terms of proposed rules of procedure and in  
11 enacting transfer statutes, NASP has become aware of a number of common misconceptions  
12 about structured settlements and structured settlement transfers. In addition, NASP has a  
13 few suggestions for the Arizona Supreme Court to consider as part of the new rule of  
14 procedure.  
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#### 17 Facts about Structured Settlements and Structured Settlement Transfers

- 18 1. The primary market for structured settlements (i.e., the business associated with setting  
19 up structured settlements to resolve personal injury claims/lawsuits) is a multi-billion  
20 dollar industry. The National Structured Settlement Trade Association (the NSSTA),  
21 which is a trade association representing insurance companies and insurance brokers and  
22 others involved in putting tort claimants/plaintiffs into structured settlements, have  
23 reported in recent years that the premiums paid in connection with the issuance of  
24 structured settlement annuities exceed \$6 billion per year, every year. It has also been  
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1 reported that over \$100 billion in structured settlement annuity premiums have been paid  
2 since the early 1980's when structured settlements first came into use.

- 3  
4 2. A relatively small percentage of structured settlement recipients ever need, desire, or  
5 pursue liquidity of their structured settlement payments through a transfer or assignment  
6 of their structured settlement payment rights to a third party in return for a lump sum  
7 payment – which is known as the “Secondary Market” or structured settlement factoring.  
8 The entire Secondary Market for structured settlement payment transfers nationwide is  
9 around \$400 million, or less than 7% of the Primary Market. This has remained  
10 relatively stable in recent years. As is evident, the Secondary Market is a small, but  
11 important, part of the overall structured settlement industry. As the Primary Market  
12 expands and grows, some payees will inevitably discover that their structured settlement  
13 no longer meets their needs or they will experience a death, divorce, illness, loss of  
14 employment, or other financial/personal change in their life circumstances that will cause  
15 them to reexamine whether their structured settlement is appropriate or meeting their  
16 needs. These payees will need a “release valve,” or liquidity option relative to their  
17 structured settlement payments. The Secondary Market provides that release valve by  
18 providing a viable, efficient, liquidity option for such individuals. This market is highly  
19 regulated, in that each and every transaction must be approved by a court order rendered  
20 in accordance with applicable State transfer statutes and Federal tax law. NASP  
21 supports court review of all structured settlement transfers.  
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- 1 3. When settling personal injury claims in the Primary Market, our experience is that few  
2 structured settlements are reviewed or approved by a court. Most structured settlements  
3 involve out-of-court settlements, negotiated by the claimant/plaintiff and/or their counsel  
4 and the defendant/tortfeasor and/or the defendant and/or insurance carrier's counsel.  
5 Typically, only structured settlements involving minors and/or incompetents are court-  
6 approved in the Primary Market.  
7
- 8 4. On the other hand, all Secondary Market transactions (structured settle transfers) under  
9 Arizona law must be court approved. NASP members supported State and Federal  
10 legislation to require all transfers of structured settlement payments to be submitted for  
11 court approval and continue to do so.  
12
- 13 5. Most individuals who agree to accept structured settlement payments over time, in lieu of  
14 a lump sum or all cash payment, are not informed when they enter into a structured  
15 settlement that, if they desire liquidity with respect to those future payments, they will  
16 have to go to court and prove to a Judge that it is in their best interest to sell, assign, or  
17 transfer some of their future payments to a third party. When they learn from NASP  
18 members that in order to sell, assign, or transfer their property rights, they must secure  
19 court approval they are often surprised.  
20
- 21 6. Most structured settlement transfer transactions involve the transfer/assignment of only a  
22 portion of the payee's future payment rights.  
23
- 24 7. These transactions involve the transfer of private property rights. The right to receive the  
25 future payments of the payee/annuitant is a property right that belongs to the  
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1 annuitant/payee. It can be disposed of by will or by beneficiary designation. It can be  
2 involuntarily seized by taxing authorities and, in some jurisdictions, by secured and even  
3 unsecured creditors.  
4

5 8. Because of the way structured settlements are established and the federal tax laws that  
6 govern them (i.e., IRC 130), payees/annuitants cannot simply cash out all or a portion of  
7 their future payment rights with the insurance company obligated to make the future  
8 structured settlement/annuity payments. Nor can they increase, decrease, accelerate,  
9 defer, or otherwise alter the payments if and when their financial or life circumstances  
10 change. The parties to the original structured settlement, including the payee/annuitant,  
11 the parties agreeing to the structured settlement, and the insurance company issuing the  
12 funding annuity, receive certain tax benefits and advantages by entering into a structured  
13 settlement. As a condition to receiving those tax benefits, the participants to the  
14 structured settlement cannot change the payment terms. In other words, once a  
15 payee/annuitant agrees to a structured settlement, they are locked in to the payment  
16 stream with the structured settlement obligor and/or annuity issuer no matter what might  
17 change in the future. Obviously, the primary disadvantages of structured settlements are  
18 the lack of flexibility and liquidity.  
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22 9. The Secondary Market does provide a limited mechanism for structured settlement  
23 flexibility. An efficient and available Secondary Market is necessary so that recipients of  
24 structured settlement payments have liquidity options when they need, desire, or want  
25 them. NASP members provide that Secondary Market, so it is important that the market  
26

1 not be foreclosed to the customers of NASP members (that is, residents of Arizona who  
2 need and desire to sell some or all of their future structured settlement payments).  
3 Without this liquidity option, the value and benefits of structured settlements would be  
4 reduced because flexibility and liquidity are not benefits that structured settlements  
5 provide to payees. Those benefits are only available from the Secondary Market.  
6

7 10. Structured settlement transfer transactions under an applicable state transfer statute, such  
8 as A.R.S. §12-2901, do not create adverse tax consequences to the parties to the original  
9 structured settlement.  
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### 11 **A New Proposed Rule of Procedure for Structured Settlement Transfers**

12 As indicated, NASP does not generally oppose a proposed rule of procedure to assist  
13 judges in reviewing structured settlement transfers. However, in considering a rule of  
14 procedure, NASP would ask all parties promulgating and considering such a rule to consider  
15 that the transaction in question almost always involves the sale and assignment of private  
16 property rights (i.e. the right to receive future structured settlement payments) in return for a  
17 lump sum cash payment by a competent, mature adult who likely made the decision to accept  
18 the structured settlement on the front end without the benefit of the knowledge that their  
19 right to transfer, sale, assign and/or dispose of these property rights would be limited to  
20 transactions that would be approved by a court order. Additionally, NASP believes it is  
21 important to understand that most structured settlements are not court-approved on the front  
22 end. There is a risk and a cost for pursuing these transactions in court for Funding  
23 Companies. Obviously, there are court costs and attorneys fees incurred in every transaction.  
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1 Moreover, if the transaction is not approved, those costs are borne exclusively by the  
2 Funding Company. Thus, it is important that Funding Companies and their customers have  
3 some reasonable expectations and understanding about the nature of the court proceeding  
4 and the costs associated with same.  
5

6 Furthermore, one of the primary complaints by payees/annuitants who discover that  
7 they have to go to court to secure judicial approval of their right to transfer and assign their  
8 own property rights is that they are compelled to discuss and disclose, in open court, intimate  
9 and personal details of their own financial affairs and family and personal circumstances.  
10 The tension caused by requiring court review and approval of these transactions and the  
11 resulting restrictions on alienability of private property right and the inherent public nature  
12 of such proceedings, which therefore requires competent adults to disclose and discuss in  
13 open court intimate and personal details of their financial affairs, has not been ignored in  
14 legislative debates relative to these laws. That tension continues and it is up to the parties and  
15 the courts to balance these factors. NASP urges that the proposed rule of procedure be  
16 drafted in a way that provides the Judge with the information required to evaluate the  
17 transaction, without compelling the seller to disclose and discuss in open court such private  
18 and intimate information that details their financial affairs and personal circumstances.  
19 NASP believes it is important to recognize that the payment streams at issue constitute  
20 important property rights of the individuals who are receiving them. It is unlikely that any of  
21 these individuals who might need this service in the future will be commenting on this rule at  
22 this time so consideration of their privacy and property concerns is important.  
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1 Obviously a rule must be drafted that applies uniformly to everyone who desires to  
2 complete a structured settlement payment transfer transaction, but not all payees/annuitants  
3 circumstances are the same. NASP continues to believe that each and every transaction  
4 must be evaluated based on the particular circumstances of the payee/annuitant, the  
5 transaction, the underlying structured settlement and other factors.  
6

7 In considering the proposed Rule 70.1 suggested by counsel for the State Bar, which  
8 NASP understands has been accepted by Judge Burke, the original petitioner for the rule,  
9 NASP would ask for the following consideration and/or revisions (a revised version of the  
10 Proposed Rule 70.1 is attached as Exhibit A):  
11

- 12 A. NASP does not oppose requiring a Payee's Declaration. NASP would suggest,  
13 however, that the rule provide that the Payee's Declaration may be filed with  
14 the Application or after, but in any event at least 10 days prior to the hearing  
15 on the Application. (The reason for this suggested change is that often a  
16 payee/annuitant might not desire or even realize that they can pursue a transfer  
17 of structured settlement payment rights to address a personal, family, or  
18 financial situation until the situation is quite serious. So, when they contact the  
19 Funding Company to pursue the transaction, they need it to move quite  
20 quickly. By allowing the Payee's Declaration to be filed after the Application,  
21 the transferee can avoid undue delay in the court process by filing the  
22 Application and supplementing with the Payee's Declaration later, if  
23 necessary.)  
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- 1 B. NASP would suggest eliminating the requirement that the Payee's Declaration  
2 require the Payee to disclose the names and ages of the payee's minor children.  
3 Many people are not comfortable with being required to disclose, in writing in  
4 a public filing, the names and ages and place of residence of their minor  
5 children simply to sell an asset. NASP understands that this information would  
6 be important to a reviewing court, but would suggest that the Declaration  
7 simply disclose that the payee has X number of minor children and their ages  
8 and additional information can be discussed at the hearing. (While NASP  
9 understand the hearing is open to the public and will often be recorded, the  
10 information is less likely to be publicly disseminated under those  
11 circumstances, than if there is a filing made in writing.)  
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14  
15 C. Requiring the payee to disclose child support or spousal maintenance orders is  
16 appropriate. NASP members typically require that all past due child support  
17 and/or spousal support be paid from the proceeds of the transaction because of  
18 the nature of those obligations.  
19  
20 D. However, requiring the payee to disclose, under oath, whether they are subject  
21 to other orders in civil, probate, or criminal cases to pay money basically  
22 implies that someone who is indebted on such orders cannot enter into this type  
23 of transaction in order to avoid foreclosure on a home, secure medical  
24 treatment for a child, finish their education, etc., unless the other obligation is  
25 satisfied. In many jurisdictions, structured settlement/annuity payments are  
26

1 exempt from the claims of unsecured creditors. *See* A.R.S. § 33-126.7.  
2 Requiring the disclosure of all court orders/judgments directed at the payee to  
3 pay some third party money, as a requirement for securing court approval of a  
4 transfer of an exempt asset such as future annuity payments, would seem to  
5 conflict with the concept of a statutory exemption for such property rights.  
6 The payee may very well choose to use the proceeds to pay a child support  
7 order, or past due taxes, or for a medical procedure for a child, rather than a  
8 money judgment in favor of a credit card company.  
9  
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11 E. We understand the rule requires the disclosure of child support and spousal  
12 support orders, previous transfer applications and the results of same, etc. To  
13 make it easier for payees and transferees, and still provide the Court the  
14 information requested, we would request that the rule be amended to allow, in  
15 lieu of providing such information in the Payee's Declaration, that copies of all  
16 such required orders may be tendered to the reviewing court with the  
17 Application and/or Payee's Declaration.  
18

19 F. We would suggest that paragraphs 9 and 10 be deleted and replaced with the  
20 following (again to try and protect, to some extent, the privacy of the payee's  
21 financial and personal affairs):  
22

23 a. The payee must be prepared to address and shall present to the Court at the  
24 hearing on the Application, if applicable, testimony about (i) the payee's  
25 reasons for the proposed transfer; (ii) his/her plans for the proceeds, and  
26

1 (iii) if the payee intends to use the proceeds from the proposed transfer to  
2 pay debts, the amount of such debts, the identity of the creditor(s), and the  
3 rate of interest, if any, accruing on such debts.  
4

5 G. On subsection (b)(1) of the proposed Rule 70.1, NASP would suggest inserting  
6 “with the payee” after “making reasonable inquiry.” This clarifies that the  
7 transferee is required to make reasonable inquiry with the payee about prior  
8 transfers. Clearly, the payee is in the best position to know whether they have  
9 attempted/completed previous transfers. Transferee should not be required to  
10 go beyond making inquiry with the payee about previous transfers. If the  
11 transferee is aware of prior transfers, from its own files or from talking to the  
12 payee, that information must be disclosed, but the current language leaves it a  
13 bit vague as to what is required with respect to the transferee’s obligation to  
14 make inquiry.  
15

16  
17 H. We would also suggest that language be added, which recognizes that the  
18 transaction the court is being called upon to approve or disapprove involves a  
19 transfer, sale, and/or assignment of private property rights by an Arizona  
20 resident who, when they acquired said property right, were likely not made  
21 aware of the restrictions on alienability to which said property right would be  
22 subject in the future. Such language would recognize those situations where  
23 the original decision to accept the structured settlement was made by a  
24 competent adult, without court review or approval, in an arms length  
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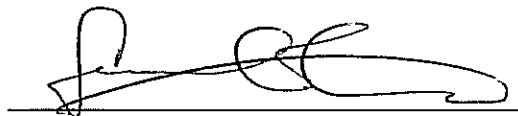
1 settlement involving the settlement of a lawsuit/claim and that the subsequent  
2 decisions of such competent adults to liquidate all or a portion of said property  
3 right should be given some consideration and deference, even where the  
4 transaction must be court approved. The following language is offered for  
5 consideration:  
6

7 a. Rule 70.1 (c) If the original structured settlement was not originally subject  
8 to court review or approval and the payee was a competent adult at the time  
9 of said structured settlement and if it further appears to the court reviewing  
10 the proposed transfer that the payee is competent and is making an  
11 informed decision to move forward with the proposed transfer and it does  
12 not appear that the transaction will cause the payee unable to financially  
13 support the payee or the payee's dependents, then the court should give  
14 significant weight to the desires of the payee to complete the transaction in  
15 determining whether the transfer should be approved.  
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## 20 Conclusion

21 The National Association of Settlement Purchasers supports the adoption of rule of  
22 procedure relative to structured settlement payments but requests that the rule be revised as  
23 provided herein.  
24  
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1 RESPECTFULLY SUBMITTED this 20<sup>th</sup> day of May, 2008.

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4 

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Electronic copy filed with the Clerk of the  
Supreme Court of Arizona this 20<sup>th</sup> day of May, 2008  
By: \_Samuel T. Crump, Sr.

1 Copies of the foregoing mailed May 20, 2008 to:

2 Hon. Edward O. Burke  
3 Maricopa County Superior Court  
4 125 W. Washington St. #101  
Phoenix, AZ 85003

5 Hon. Mark Aceto  
6 Presiding Civil Judge  
7 Maricopa County Superior Court  
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1 **EXHIBIT A**

2 **Rule 70.1 Application to Transfer Structured Settlement Payment Rights**

3 Every application for approval of the transfer of structured settlement rights filed  
4 pursuant to A.R.S. § 12-2901, *et. seq.* shall include:

5 (a) A Payee's Declaration in Support of Application, filed with or after the  
6 Application, but in any event at least ten (10) days prior to the hearing on the  
7 Application, signed under oath by the payee, that sets forth the following  
8 information:  
9

- 10 1. The payee's name, address and age.
- 11 2. The payee's marital status, and, if married or separated, the name of  
12 the payee's spouse.
- 13 3. The number and ages of the payee's minor children and other  
14 dependents, if any.
- 15 4. The payee's monthly income and sources of income, and, if presently  
16 married, the monthly income and sources of income of the payee's  
17 spouse.
- 18 5. Whether the payee is subject to any child support or spousal  
19 maintenance orders, and, if so, for each such order:
  - 20 A. the amount of the obligation, to whom it is payable, and whether  
21 there are arrearages, and, if so, the amount; and  
22

1 the jurisdiction and name of the court that entered the order, the  
2 case number of the action in which the order was entered, the  
3 parties to such action, and the date when the order was entered.  
4

5 6. Whether there has been any previous application to any court or  
6 responsible administrative authority for approval of a transfer of  
7 payment rights under the structured settlement that is the subject of the  
8 application, and, if so, for each such application:  
9

10 A. The jurisdiction and name of the court or responsible  
11 administrative authority that considered the application, the case  
12 number of the action in which the application was submitted, the  
13 parties to such action, and the date when the application was  
14 filed; and  
15

16 B. Whether the application was approved or disapproved, the date  
17 of the order approving or disapproving the transfer, and, if  
18 approved:  
19

20 i. The name of the transferee and the payment amount(s) and  
21 due dates of the payments involved in the transfer; and

22 ii. The amount of money the payee received from the  
23 transferee for the transfer, if any, and the manner in which  
24 the money was used.  
25  
26



1           7.     In lieu of the information to be included in the payee's declaration  
2                 relative to subsections (5) and (6), the payee and/or the transferee may  
3                 submit copies of the orders/judgments in question which reflect and  
4                 include the information requested.  
5

6           8.     Whether the payee has ever transferred payment rights under the  
7                 structured settlement without court approval or the approval of a  
8                 responsible administrative authority, and, if so, for each such transfer:

9                 A.    the name of the transferee and the payment amount(s) and due  
10                        dates of the payments involved in the transfer; and  
11

12                B.    the amount of money the payee received from the transferee for  
13                        the transfer, if any, and the manner in which the money was used.  
14

15          9.     The payee must be prepared to address and shall present to the court at  
16                 the hearing on the Application, if applicable, testimony or other  
17                 evidence about (i) the payee's reasons for the proposed transfer; (ii)  
18                 his/her plans for the proceeds; and (iii) if the payee intends to use the  
19                 proceeds from the proposed transfer to pay debts, the amount of such  
20                 debts, the identity of the creditor(s), and the rate of interest, if any,  
21                 accruing on such debts.  
22

23          (b)    A Transferee's Declaration in Support of Application, signed under oath by the  
24                 transferee, that states that:  
25  
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- 1           1.     After making reasonable inquiry with the payee, the transferee is not  
2           aware of any prior transfers of structured settlement rights by the  
3           payee other than those disclosed in Payee's Declaration in Support of  
4           Application;  
5
- 6           2.     The transferee has complied with its obligations under A.R.S. § 12-  
7           2901, *et seq.*; and  
8
- 9           3.     To the best of the transferee's knowledge after making reasonable  
10          inquiry, the proposed transfer would not contravene any applicable  
11          law, statute, or the order of any court or other government authority.

12       (c)    If the original structured settlement was not subject to court review or approval  
13           and the payee was a competent adult at the time of said structured settlement  
14           and if it further appears to the court reviewing the proposed transfer that the  
15           payee is competent and is making an informed decision to move forward with  
16           the proposed transfer and it does not appear that the transaction will cause the  
17           payee to be unable to financially support the payee or the payee's dependents,  
18           then the court should give significant weight to the desires of the payee to  
19           complete the transaction in determining whether the transfer should be  
20           approved.  
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